

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY UNEMPLOYMENT INSURANCE

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2010-13 as issued by Governor Brewer. (See the text of the executive order at 16 A.A.R. 1183, July 2, 2010.) The Governor's Office authorized the notice to proceed through the rulemaking process on July 8, 2010.

[R10-173]

PREAMBLE

1. Sections Affected

R6-3-5105

Rulemaking Action

Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 41-1954(A)(3)

Implementing statute: A.R.S. § 23-727(D), (I), and (J) as amended by Laws 2010, Ch. 197, § 1

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 16 A.A.R. 2405, December 10, 2010 (*in this issue*)

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Beth Broeker

Address: Department of Economic Security
1789 W. Jefferson St.
Site Code 837A
Phoenix, AZ 85007

or

P.O. Box 6123, Site Code 837A
Phoenix, AZ 85007

Telephone: (602) 542-6555

Facsimile: (602) 542-6000

E-mail: bbroeker@azdes.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

Laws 2010, Ch. 197, § 1 (H.B. 2541) added subsections (I) and (J) to A.R.S. § 23-727. This new legislation provides that an employer's unemployment insurance experience rating account shall not be charged for benefits paid to a former worker who was terminated because:

- The employer was called into active military duty, or
- A former employee of the employer returned to work for the employer after being called into active military duty, thus replacing the former worker now filing for unemployment insurance benefits.

The proposed amendment to R6-3-5105(B) will accomplish the intent of this legislation by adding these two reasons for separation to the list of terminations that shall be considered a discharge for compelling personal reasons not

Notices of Proposed Rulemaking

attributable to the employer. A.R.S. § 23-771(D) provides that employers will not be charged for separations that are determined to be for compelling personal reasons not attributable to the employer.

6. **A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Not applicable

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

8. **The preliminary summary of the economic, small business, and consumer impact:**

No unemployment insurance benefits come from general state revenues. Benefits not charged to specific employers' experience rating accounts are taken from the general state unemployment insurance trust fund. However, the Department anticipates that the number of separations falling within the two categories covered by the new statute and this rule change will be quite insignificant. Thus, the impact on the state unemployment insurance trust fund will be negligible.

Any employer who has a worker who is terminated under one of these two conditions will benefit from the rule change, because the employer's experience rating account will not be charged for benefits paid to the worker. Prior to this rule change, the separation would be considered a discharge for reasons other than misconduct and the employer's account would be charged for benefits paid to the worker.

Claimants filing for unemployment insurance will not be impacted by the new statute and the resulting rule change, as they would be eligible with or without the changes.

9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Individuals requiring additional information should contact the person listed in item 4.

10. **The time, place, and nature of the proceedings for the making, amendment or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

The Department does not plan to hold oral proceedings on this rule unless a written request is submitted to the individual listed in item 4.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

12. **Incorporations by reference and their location in the rules:**

None

13. **The full text of the rules follows:**

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY
UNEMPLOYMENT INSURANCE

ARTICLE 51. DISCHARGE BENEFIT POLICY

Section

R6-3-5105. General

ARTICLE 51. DISCHARGE BENEFIT POLICY

R6-3-5105. General

A. No change

1. No change

a. No change

b. No change

c. No change

d. No change

i. No change

ii. No change

2. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
- B.** Discharge for a compelling personal reason not attributable to the employer.
 1. The Department ordinarily restricts the determination of a separation from work for a compelling personal ~~reasons~~ reason to circumstances that have no direct relationship to a worker's employment and ~~when a~~ the worker left employment for a cause beyond the worker's control. However, the Department may make a determination that the worker was discharged for a compelling personal reason not attributable to the employer when the employer discharged the worker under subsections (B)(2), ~~and (B)(3)~~ (3), and (4).
 2. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 3. No change
 4. The Department shall determine that a discharge was for a compelling personal reason not attributable to the employer if:
 - a. The worker's employment was terminated because the worker's employer was called into active duty in the military; or
 - b. The worker's employment was terminated because a former employee of the employer returned to work for the employer after having been called into active duty in the military, displacing the worker.
- 4.5. No change